

THE COMMISSIONER OF CORPORATIONS HEREBY ADOPTS  
THE FOLLOWING CHANGES IN THE REGULATIONS UNDER THE  
CAPITAL ACCESS COMPANY LAW  
AS SET FORTH IN CHAPTER 3, TITLE 10,  
CALIFORNIA CODE OF REGULATIONS  
EFFECTIVE: July 1, 1999

Add Subchapter 2.3 to Chapter 3 of Title 10 of the California Code of Regulations to read:

**Article 1. Definitions**

280.100. Definitions.

- (a) “Code” means the California Corporations Code.
- (b) “Commissioner” means the Commissioner of Corporations.
- (c) “Department” means the Department of Corporations.

Note: Authority cited: Section 28951, Corporations Code. Reference: Section 28951, Corporations Code.

**Article 2. Application for Licensure and Related Forms**

280.150. Office Location for Filing of Application and Related Forms.

All applications, notices or forms under the Capital Access Company Law must be filed in the Sacramento Office of the Department of Corporations, located at 980 Ninth Street, Suite 500, Sacramento, CA 95814.

Note: Authority cited: Section 28951, Corporations Code. Reference: Section 28951, Corporations Code.

280.151. Application for a License Under the Capital Access Company Law.

The application for licensure under the Capital Access Company Law shall be made in the following form:

(Department of Corporations Use Only)  
Fee Paid \$ \_\_\_\_\_  
Receipt No. \_\_\_\_\_

DEPARTMENT OF CORPORATIONS  
File No. \_\_\_\_\_

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS  
**FACING PAGE**  
FOR  
APPLICATION FOR A LICENSE UNDER THE  
**CAPITAL ACCESS COMPANY LAW**

*PRE-LICENSE AMENDMENT NO.* \_\_\_\_\_ *POST-LICENSE AMENDMENT NO.* \_\_\_\_\_

The application **must be TYPEWRITTEN and accompanied** by an application fee of \$1,400. The application (together with the fee payable to the Commissioner of Corporations) must be filed only in the Sacramento Office of the Department of Corporations.

**Special Instructions:** Any amendment to this application for licensure under the Capital Access Company Law shall be made by a verified pre-license or post-license amendment to the application. A pre-license amendment is required for an amendment to the application prior to licensure; a post-license amendment is required subsequent to licensure. An amendment is made by filing the completed "Facing Page" with the appropriate pre-license or post-license amendment number entered, attaching the pages of that part of the application (including the exhibits) that are revised or changed, and attaching another duly executed and verified "Execution Page". (The Execution Page is found at the end of this application.)

1. Name of Applicant: \_\_\_\_\_

Fictitious Business Name: \_\_\_\_\_

2. List the place or places of business at which Applicant will engage in licensed activity. Indicate principal place of business and branch or other office locations: (Attach a separate sheet, if necessary.)

\_\_\_\_\_  
(Number and Street) (City) (County) (State) (Zip)

\_\_\_\_\_  
("d.b.a." or fictitious business name) (Name of person in charge of business location)

**[The application continues on the following, separate pages.]**

3. Applicant is organized and will do business as (check as applicable):

☐ a corporation

☐ a limited liability company

☐ a partnership

☐ a limited partnership

☐ trust

☐ other (please specify) \_\_\_\_\_

4. Complete the following:

Applicant was organized on \_\_\_\_\_.  
(Date)

The **FULL** first, middle (if no middle name, so indicate) and last name, and complete business address **MUST** be given for each person named below: (Attach additional sheets, if necessary.)

***General Partners:***

\_\_\_\_\_  
(Name) (Business Address)

\_\_\_\_\_  
(Name) (Business Address)

\_\_\_\_\_  
(Name) (Business Address)

***President/Chief Executive Officer:***

\_\_\_\_\_  
(Name) (Business Address)

***Executive Vice President/Vice President:***

\_\_\_\_\_  
(Name) (Business Address)

***Secretary:***

\_\_\_\_\_  
(Name) (Business Address)

***Treasurer/Chief Financial Officer:***

\_\_\_\_\_  
(Name) (Business Address)

***Other Principal Officers:***

(Name and Title)	(Business Address)
(Name and Title)	(Business Address)
(Name and Title)	(Business Address)

***Director(s):***

(Name)	(Business Address)
(Name)	(Business Address)
(Name)	(Business Address)

***Manager(s)/Member(s)*** [i.e., a manager member of an association, or a manager appointed or elected by the members of a limited liability company]:

(Name)	(Business Address)
(Name)	(Business Address)
(Name)	(Business Address)

***Trustee(s):***

(Name)	(Business Address)
(Name)	(Business Address)
(Name)	(Business Address)

***Employees who have access to or responsibility for funds held by the applicant:***

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(Name and Title)	(Business Address)
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(Name and Title)	(Business Address)
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(Name and Title)	(Business Address)
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***Any person (other than those persons listed above) that owns or controls, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the applicant. If the “person” is a corporation or other business entity, please provide sufficient information to identify the individual(s) in positions of management in, or who own or control, the corporation or business entity. (E.g., the name and business address of the officers, directors, partners, etc.) (See Corporations Code Sections 28035 and 28036):***

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(Name)	(Business Address)
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(Name)	(Business Address)
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5. Provide the following information for the investment adviser(s) who will make recommendations to the applicant with respect to the investment of funds.

a.

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(Name)	(Business Address)
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(Name)	(Business Address)
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(Name)	(Business Address)
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- b. Provide the following information for each investment adviser:

1. Is the investment adviser registered under the Investment Advisers Act of 1940?

[ ] Yes. The investment adviser’s SEC File Number: \_\_\_\_\_

[ ] No. Explain why and cite the appropriate statutory authority. (E.g., the investment adviser is exempt from registration under Section 203(b)(1) of the Investment Adviser Act of 1940.).

2. Is the investment adviser licensed by the State of California?

[ ] Yes. The investment adviser's license number: \_\_\_\_\_

[ ] No. Explain why and cite the appropriate statutory authority. (E.g., the investment adviser is exempt from licensure under Section 25202 of the Corporate Securities Law of 1968.)

6. a. Furnish the File Number(s) of any other Department of Corporations' license(s) currently held by applicant or affiliates of the applicant: \_\_\_\_\_

b. Furnish the license number(s) and description of any state or federal licenses held by the applicant. (E.g., a California real estate broker's license.): \_\_\_\_\_.

7. The applicant's fiscal year end is: \_\_\_\_\_

Note: If you **DO NOT** designate a fiscal year end, the Department of Corporations will record your fiscal year end as December 31.

8. If any person other than the applicant makes or keeps any of the books, accounts, or other records of the applicant, provide the following information:

_____	_____
(Name)	(Business Address)
_____	
(Relationship to applicant)	

9. The following items **MUST BE** provided as Exhibits to the application:

**EXHIBIT A.** A statement of financial solvency supported by an audited financial statement dated not more than 90 days from the date this application is filed with an unqualified opinion prepared by an independent certified public accountant in accordance with generally accepted accounting principles reflecting the required minimum tangible net worth of \$250,000, the minimum \$5,000,000 to invest, and the financial resources to pay the (company's) expenses in transacting business for at least 3 years from the date of licensure.

**EXHIBIT B.** A copy of the fidelity bond (including any riders). A certified copy of the bond and any riders shall be filed with the Commissioner within 10 days of its execution. [See Rule 280.400.]

**EXHIBIT C.** For each person named in Item 4 of this application, please furnish the following:

1. A Statement of Identity and Questionnaire\*,
2. Fingerprint Card\*, and
3. Notice of Officers, Directors, Partners, “Control” Persons, Managers, Members, Trustees, and Employees of a Capital Access Company\*. [See Rule 280.153.]

\* These documents shall be treated by the Department of Corporations as being received in confidence pursuant to paragraph (4) of subdivision (d) of Section 6254 of the Government Code.

**EXHIBIT D.** A detailed plan of business that includes at a minimum the following items:

1. Describe in sufficient detail the business activities of the applicant, including but not limited to, the applicant’s proposals to appoint officers, sell securities, obtain financing or purchase securities of small business firms .
2. Information as to the education, financial condition and business experience, and criminal convictions of the following:
  - a. Any person that owns or controls, directly or indirectly, 10 percent or more of any class of stock or other voting securities of the applicant.
  - b. Any person that controls, directly or indirectly, the election of 25 percent or more of the members of the board of directors, executive committee, or other policy committee of the applicant.
  - c. Any person or entity that has the ability to control the management of the applicant.
3. A description of any disciplinary actions filed against any other license under which the applicant conducts its business.
4. A description of any adverse judgments entered in court actions filed against the applicant based upon allegations of fraud, misrepresentation, or dishonesty in the conduct of the applicant’s business.
5. A listing of all material judgments filed against the applicant, and the disposition of each material judgements.
6. A listing of all bankruptcy petitions filed by the applicant for the preceding five years, and the disposition of each bankruptcy petition.

7. Has any person listed in Item 4 violated\* any provision of the Corporate Securities Law of 1968 (or the rules of the Commissioner of Corporations thereunder), the Securities Act of 1933, the Securities Exchange Act of 1934, the Small Business Investment Company Act of 1958, the Investment Company Act of 1940 (or any rules of the Securities and Exchange Commission), or the Business and the Industrial Development Corporation Law (or the rules of the Commissioner of Financial Institutions thereunder). If the answer is “yes”, set forth below the name(s) of the state(s) or foreign country(ies), the specific provision(s) of the law(s) and rule(s), and the date(s) and disposition(s) of the violation(s). (Attach additional sheets, if necessary.)
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\* For the purposes of this question, “violated” means that the applicant: (1) either has been convicted or pled nolo contendere to a felony or misdemeanor; (2) has been held liable in a civil action by final judgment; (3) is or has been permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction; and (4) is or has been subject to any order of a commission or administrator under any law or rule referred to in this question. If the conviction has been overturned or reversed on appeal, provide a copy of the order and any other documents necessary to explain the final disposition.

8. A list of officers, directors, partners, members, trustees, employees, or other persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant who has, within the last 10 years:

- a. Been convicted of, or plead nolo contendere to, a crime; or
- b. Committed any act involving dishonesty, fraud or deceit,

if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this Law.

**EXHIBIT E.** Complete the form entitled “Customer Authorization of Disclosure of Financial **must be TYPEWRITTEN** and signed by a person authorized to sign on behalf of the applicant.

**EXHIBIT F.** If the applicant will be doing business under a fictitious business name, provide a copy of the Certificate of Filing and Proof of Publication, both of which bear the County Clerk’s filing stamp. Refer to Section 17000 of the Business and Professions Code for the requirements of filing this statement.

**EXHIBIT G.** Submit a copy of applicant’s organizational documents and any amendments thereto. (E.g., Articles of Incorporation, Bylaws, Articles of Organization, Articles of Partnership, etc.)



**EXHIBIT H.** Provide the following if the applicant is a subsidiary:

1. A statement disclosing the ultimate parent corporation's name and state where incorporated.
2. A statement disclosing whether applicant has or will have other licensed locations or affiliates in California operating under a similar plan or business.
3. A statement disclosing the complete business address and telephone number of applicant's management officer in California. If none, so indicate.

**EXHIBIT I.** Submit a copy of the applicant's conflict of interest policies and procedures to demonstrate compliance with Sections 28820, 28822, 28823, 28824, 28825, 28826, 28827, 28828 and 28829 of the Corporations Code.

**EXHIBIT J.** Submit a copy of any contracts that the applicant has entered into with any investment adviser(s). (See Section 28212 of the Corporations Code.)

**EXHIBIT K.** Submit a consent to service of process from applicant and for applicant's parent organization and/or all of the applicant's subsidiaries in the form stated in Rule 280.152. Service made pursuant to the terms of the consent to service of process shall have the same force and validity as if served personally on the applicant.

**EXHIBIT L.** By signing the application as provided for on the Execution Page, the applicant agrees (or attests) to the following:

1. To maintain staff adequate to meet the requirements of the Capital Access Company Law, as prescribed by rule or order of the Commissioner of Corporations.
2. To keep and maintain for 60 months the business records and other information required by law or rules of the Commissioner of Corporations regarding any activities undertaken in the course of the conduct of its business.
3. To file with the Commissioner of Corporations any report or applications required under law or rule or order of the Commissioner of Corporations, including, but not limited to: Surrender of License Application and Applications to Acquire Control, Merge With, or Purchase or Sell All or Substantially All of the Licensee's Business or of the Business of any of the Licensee's Offices to Another Licensee.
4. To file with the Commissioner of Corporations an amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.
5. To notify the Commissioner of Corporations, in writing, by certified mail, return receipt requested, prior to opening a branch office in this state or changing its business location(s) or the location(s) of any branch office(s) from which activities subject to the Capital Access Company Law are conducted.

6. To comply with the provisions of the Capital Access Company Law, Section 6(a)(5) of the Investment Company Act of 1940, the Corporate Securities Law of 1968, and with any order or rule of the Commissioner of Corporations.
7. To submit to periodic and nonroutine examinations by the Commissioner of Corporations and to pay any required fees associated with examinations, audits, or investigations conducted by the Department of Corporations, as required by the Capital Access Company Law.
8. To advise the Commissioner of Corporations by amendment to this application of any material judgment filed against, or bankruptcy petition filed by, the applicant within five days of the filing.
9. Hereby attests that the applicant will ensure compliance with the conflict of interest provisions outlined in Sections 28820-28829 of the Corporations Code.
10. Hereby attests that the officers, directors, partners, trustees and members have read and understand the Capital Access Company Law and rules adopted thereunder.
11. Hereby attests that the applicant has complied with all applicable state and federal tax return filing requirements for the past three years or has filed with the Commissioner of Corporations an independent certified public accountant's or attorney's statement as to why no return was filed.
12. Hereby attests that the applicant has not committed a crime under the laws of any state or the United States, involving moral turpitude, misrepresentation, fraudulent or dishonest dealing, or fraud and has disclosed to the Commissioner of Corporations any final judgment entered against it in a civil action upon grounds or allegations of fraud, misrepresentation, or deceit.
13. Hereby attests that the applicant has not engaged in conduct that would be cause for denial of a license.
14. Hereby attests that the applicant will submit the economic benefit surveys and questionnaires to the Trade and Commerce Agency in compliance with Section 28506 of the Capital Access Company Law.
15. Hereby attests that the applicant is not insolvent.
16. Hereby attests that the applicant has acted with due care and competence in performing any act for which it is required to hold a license under the Capital Access Company Law.
17. Hereby attests that the applicant will comply with all applicable requirements of California and federal law, including the Corporate Securities Law of 1968.
18. Hereby attests that the applicant's organizational documents will include the provisions required in Section 28200 of the Capital Access Company Law.

19. Hereby attests that the applicant will not engage in any business other than the following:
- a. The business of providing financial assistance through the purchase of securities of small business firms doing business or proposing to do business wholly or substantially in this state.
  - b. The business of providing managerial assistance (including managerial and technical assistance) to small business firms doing business or proposing to do business wholly or substantially in this state.

**[The next page is the Execution Page.]**

## EXECUTION PAGE

Please indicate the name, address, title, and telephone number of the person who should be contacted for information regarding this application. The license will be mailed to this person unless otherwise instructed.

Attention: \_\_\_\_\_  
(Name) (Title) (Telephone Number)

\_\_\_\_\_  
(Number and Street) (City) (State) (Zip Code)

In the event of the issuance of a license, applicant agrees to comply with the requirements of the Capital Access Company Law and rules adopted, and orders issued, by the Commissioner of Corporations, and further agrees that in the event of any change of its officers, directors, or any persons named in this application, that a verified amendment to the application reflecting such change shall within fifteen business days from the date of the change, be filed with the Commissioner of Corporations setting forth the change, the effective date of the change, the names of the persons involved in the change, and a statement of the qualifications of each successor person.

WHEREFORE, applicant requests that a license be issued by the Commissioner of Corporations authorizing applicant to engage in business under the Capital Access Company Law within the State of California.

The applicant has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized.

Applicant: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

The undersigned, on behalf of the applicant, acknowledges that this application and all exhibits thereto which are not designated as confidential are subject to public inspection pursuant to Section 250.9.1, Chapter 3, Title 10, California Code of Regulations. A request for confidentiality of certain documents may be requested pursuant to Section 250.10. If a request for confidential treatment is granted (or denied), the person making such request will be notified in writing.

I certify (or declare) under penalty of perjury that I have read the foregoing application, including all Exhibits attached thereto, or filed therewith, and know the contents thereof, and that the statements therein are true and correct

Executed at \_\_\_\_\_  
(Signature of Declarant)

Date \_\_\_\_\_  
(Typed Name)

***IF EXECUTED OUTSIDE THE STATE OF CALIFORNIA, ATTACH A VERIFICATION EXECUTED AND SWORN TO BEFORE A NOTARY PUBLIC.***

Note: Authority cited: Section 28951, Corporations Code. Reference: Sections 28103, 28104, 28108, 28110, 28152, 28153, 28200, 28210, 28211, 28320, 28400, 28500, 28501, 28502, 28503, 28504, 28506, 28551, and 28604, Corporations Code.

280.152. Consent to Service of Process; Form

The consent to service of process shall be made on the following form:

**TO THE COMMISSIONER OF CORPORATIONS OF  
THE STATE OF CALIFORNIA  
CONSENT TO SERVICE OF PROCESS**

**KNOW ALL MEN BY THESE PRESENTS**

That the undersigned, \_\_\_\_\_ (a corporation, partnership or limited liability company organized under the laws of the State of \_\_\_\_\_), (an individual), (other \_\_\_\_\_) hereby irrevocably appoints the Commissioner of Corporations of the State of California, or the Commissioner's successor in office, to be the undersigned's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the undersigned, or the undersigned's successor, executor, or administrator which arises under the Capital Access Company Law or any rule or order thereunder after this consent has been filed, with the same force and validity as if served personally on the undersigned.

For the purpose of compliance with the Capital Access Company Law, notice of the service and a copy of the process should be sent by registered or certified mail to the undersigned at the following address:

\_\_\_\_\_  
(Name and Address)

Dated: \_\_\_\_\_ By \_\_\_\_\_

Title \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF CALIFORNIA        )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, (here insert the name and title of the officer), personally appeared

\_\_\_\_\_  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Any certificate of acknowledgement taken in another place shall be sufficient in California if it is taken in accordance with the laws of the place where the acknowledgement is made. See, California Civil Code Section 1189.

Note: Authority cited: Section 28108 and 28951, Corporations Code. Reference: Section 28108, Corporations Code.

280.153. Notice of Officers, Directors, Partners, “Control” Persons, Managers, Members, Trustees and Employees.

(a) The notice to accompany the filing of an individual’s fingerprints required in the following circumstances shall be made on the form set forth in subsection (b) of this rule:

(1) In compliance with the requirements of Exhibit C to Item 10 of the application for license (Rule 280.151);

(2) In compliance with the requirements for filing an application for change of control (Rule 280.250);

(b) The notice shall be made on the following form:

Fee: \$20.00 + DOJ Noncriminal Applicant Fingerprint Fee

and the fee charged by the Department of Justice [Penal Code Section 11105]  
for processing Noncriminal Applicant Fingerprints.)

Receipt No. \_\_\_\_\_

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS

*NOTICE OF  
OFFICERS, DIRECTORS, PARTNERS, "CONTROL" PERSONS, MANAGERS, MEMBERS,  
TRUSTEES AND EMPLOYEES OF A CAPITAL ACCESS COMPANY\**

OFFICIAL USE ONLY

LAST NAME \_\_\_\_\_

Date submitted CII: \_\_\_\_\_ Applicant

I.D.# \_\_\_\_\_

**PLEASE PRINT OR TYPE**

**NAME OF COMPANY:** \_\_\_\_\_ **FILE NO.** \_\_\_\_\_

**ADDRESS OF MAIN OFFICE:** \_\_\_\_\_  
(Street) (City) (State) (Zip Code)

**EMPLOYING BRANCH OFFICE:** \_\_\_\_\_

**NAME OF OFFICER, DIRECTOR, PARTNER, "CONTROL" PERSON, MANAGER, MEMBER, TRUSTEE AND  
EMPLOYEE:**

\_\_\_\_\_  
(Last) (First) (Middle)

**POSITION HELD OR TO BE HELD:** \_\_\_\_\_

**HOME ADDRESS:** \_\_\_\_\_  
(Street) (City) (State) (Zip Code)

**DATE OF BIRTH:** \_\_\_\_\_ **PLACE OF BIRTH:** \_\_\_\_\_  
(Month) (Day) (Year)

**HEIGHT:** \_\_\_\_\_ **WEIGHT:** \_\_\_\_\_ **SEX:** \_\_\_\_\_ **COLOR OF EYES:** \_\_\_\_\_  
**COLOR OF HAIR:** \_\_\_\_\_

\* This document shall be treated by the Department of Corporations as being received in confidence pursuant to paragraph (4) of subdivision (d) of Section 6254 of the Government Code.

Note: Authority cited: Section 28951, Corporations Code. Reference: Sections 28104(a)(1),  
28152(d), 28152(e) and (f), 28153 and 28552, Corporations Code.

280.154. Amendments to Application.

A licensed capital access company shall, within 30 days after any change in the information contained in its application, other than financial information, file an amendment with the Commissioner. However, for any change in the persons listed in Item 4 of the application, the licensed capital access company must file an amendment with the Commissioner within five days of the change.

**Article 3. Application Requesting Approval to Surrender License**

280.200. Application Requesting Approval to Surrender License.

An application requesting approval to surrender a license as a capital access company shall be made on the following form:

File No. \_\_\_\_\_  
Date of Application \_\_\_\_\_

COMMISSIONER OF CORPORATIONS  
STATE OF CALIFORNIA  
APPLICATION FOR REQUESTING APPROVAL TO SURRENDER  
CAPITAL ACCESS COMPANY LAW LICENSE  
PURSUANT TO SECTION 28650 OF THE CORPORATIONS CODE

The Application for Requesting Approval to Surrender a Capital Access Company Law License **MUST BE TYPEWRITTEN** and may only be filed in the Sacramento Office of the Department of Corporations.

1. Name of Applicant: \_\_\_\_\_
2. Name under which business is conducted, if different from above:  
\_\_\_\_\_
3. Address of actual location of principal place of business:  
\_\_\_\_\_  

No. and Street	City	State	ZIP Code
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4. State the reason for surrendering the license: \_\_\_\_\_  
\_\_\_\_\_



5. Does the applicant owe any money or securities to any investor?  
( ) Yes ( ) No If answer is "yes", furnish all of the following information:
- a. Amount of money owed: \$\_\_\_\_\_
  - b. Arrangements made for the payment of the money owed:  
\_\_\_\_\_
  - c. Market value of securities (if applicable): \_\_\_\_\_
  - d. Arrangements made for the return or delivery of securities: \_\_\_\_\_
6. Has applicant assigned any of its contracts to another person?  
( ) Yes ( ) No If answer is "yes" furnish all of the following information:
- a. Name and business address of the person(s) to whom the contracts were assigned:  
\_\_\_\_\_
  - b. Name of contact person: \_\_\_\_\_
  - c. What alternative was provided with respect to those investors who did not consent to the assignment of their contracts? \_\_\_\_\_
7. Is applicant involved in any legal action or proceeding?  
( ) Yes ( ) No If "yes", furnish complete information with respect to each.
8. Are there any unsatisfied judgments or liens against applicant?  
( ) Yes ( ) No If "yes", furnish complete information with respect to each.
9. If the answer was "yes" to any questions in paragraphs 5, 6, 7, or 8 above, attach a statement of financial condition. The Statement of financial condition must be prepared in accordance with generally accepted accounting principles and must have been prepared within 10 days of filing this application. Securities of the applicant in which applicant has an interest must be listed in a separate schedule at market price, if any; and if no current independent market exists the basis upon which value has been assigned should be stated.
10. Attach a copy of the closing audit. The closing audit must be performed by an independent certified public accountant and must contain a statement specifying all deficiencies, if any, noted by the accountant, with respect to all collections and disbursements of funds, together with such information as the accountant may wish to include (such as corrective steps taken with respect to any deficiency so noted), or stating that no deficiencies were found.

- 11      Furnish below the name and address of the person who has or will have custody or possession of applicant's books and records which are required to be preserved pursuant to Rules 280.650, 280.651, and 280.652 of Title 10 of the California Code of Regulations.

- 12      The applicant has duly caused this application to be signed on its behalf by the undersigned, thereunder duly authorized.

\_\_\_\_\_  
(Applicant)

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

I certify or (declare) under penalty of perjury under the laws of the State of California that I have read this application and the exhibits thereto and know the contents thereof, and that the statements therein are true and correct.

Executed at \_\_\_\_\_, on \_\_\_\_\_  
(Place) (Date)

\_\_\_\_\_  
  
Note: Authority cited: Section 28650, Corporations Code. Reference: Sections 28650 and 28651, Corporations Code.

**Article 4. Application for Approval to Acquire Control, Merge With, or Purchase or Sell All or Substantially All of the Licensee's Business**

280.250. Application for Approval to Acquire Control, Merge With, or Purchase or Sell All or Substantially All of the Business of Another Person , or to Sell All or Substantially All of the Licensee's Business or the Business of the Licensee's Officers to Another License.

(Department of Corporations Use Only)  
Fee Paid \$ \_\_\_\_\_  
Receipt No. \_\_\_\_\_

DEPARTMENT OF CORPORATIONS  
File No. \_\_\_\_\_

- ☐ Acquisition of Control, Section 28500  
☐ Merger, Section 28601  
☐ Purchase of Business, Section 28601  
☐ Sale of Business, Section 28601

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS  
**FACING PAGE**  
FOR

APPLICATION FOR APPROVAL TO ACQUIRE CONTROL, MERGE WITH, OR PURCHASE OR  
SELL ALL OR SUBSTANTIALLY ALL OF THE BUSINESS OF ANOTHER PERSON, OR TO  
SELL ALL OR SUBSTANTIALLY ALL OF THE LICENSEE'S BUSINESS OR OF THE BUSINESS  
OF ANY OF THE LICENSEE'S OFFICES TO ANOTHER LICENSEE.

PRE-AUTHORIZATION AMENDMENT NO. \_\_\_\_\_

The Application For Approval To Acquire Control, Merge With, Or Purchase Or Sell All Or Substantially All Of The Business Of Another Person, Or To Sell All Or Substantially All Of The Licensee's Business Or Of The Business Of Any Of The Licensee's Offices To Another Licensee **MUST be TYPEWRITTEN and accompanied** by the application fee of \$900. The application (together with the fee payable to the Commissioner of Corporations) must be filed only in the Sacramento Office of the Department of Corporations.

**Special Instructions:** An Application for Authorization for a Change of Control under the Capital Access Company Law shall include (1) this completed Facing Page, (2) the completed and revised applicable pages of the Application for a License Under the Capital Access Company Law (but not the Facing Page for that application) with information contained therein necessary to enable the Commissioner of Corporations to make findings required by Corporations Code Sections 28551 and 28604 and attached to this completed Facing Page, and (3) the duly executed and verified Execution Page for this application. (A blank Execution Page may be found at the end of the Application for a License.)

In pursuance of, and in compliance with, the provisions of the Capital Access Company Law, the licensee, \_\_\_\_\_, with its principal office located at:

\_\_\_\_\_  
(Number and Street)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip Code)

hereby applies to the Commissioner of Corporations for authorization for a change of control.

1.     a.     Date of Organization: \_\_\_\_\_
- b.     State of Organization: \_\_\_\_\_
2.     Please provide the following information:
  - a.     For applications for approval to acquire control of the licensee, describe in detail how applicant meets the criteria stated in Section 28551 of the Corporations Code.
  - b.     For applications for approval of a merger, purchase or sale of the licensee, describe in detail how applicant meets the criteria stated in Section 28604 of the Corporations Code.

**[The application continues on the following, separate pages.]**  
**(See Special Instructions, above.)**

Note: Authority cited: Section 28951 Corporations Code. Reference: Sections 28550, 28551 28552 and 28604, Corporations Code.

## **Article 5. Advertising**

### **280.300. Prohibited Advertising.**

(a)     No capital access company shall advertise that it or any of its officers, employees, or agents are “bonded,” “supervised by,” “regulated by,” “audited by” or “examined by” the State of California or any agency thereof.

(b)     A capital access company shall refer to its licensure under the Capital Access Company Law in any written or printed communication or any communication by means of recorded telephone messages, telephonic or electronic media, or spoken on radio, television or similar communications media, only by the following statement: “Licensed by the Department of Corporations under the Capital Access Company Law.”

Note: Authority cited: Section 28155, Corporations Code. Reference: Section 28951, Corporations Code.

280.301. “Blind” Advertising Prohibited.

A capital access company shall not use so-called “blind” advertisements. “Blind” advertising is an advertisement used to solicit business that gives only a telephone number, post office or newspaper box number, or name other than that of the licensee.

Note: Authority cited: Section 28951, Corporations Code. Reference: Section 28951, Corporations Code.

**Article 6. Fees**

280.350. Fees.

(a) The filing fee for an application for a license shall be one thousand four hundred dollars (\$1,400).

(b) The filing fee for an application for approval to acquire control of a licensee shall be nine hundred dollars (\$900).

(c) Subject to the limitations in Section 28110(a)(3) of the Corporations Code, the filing fee for an application for approval for a licensee to merge with another company, or to purchase all or substantially all of the business of another person, or to sell all or substantially all of its business, shall be nine hundred dollars (\$900).

Note: Authority cited: Section 28951, Corporations Code. Reference: Section 28110, Corporations Code.

**Article 7. Bonding:**

280.400. (a) Each licensed capital access company shall provide and maintain a fidelity bond covering each officer, director, partner, member, trustee, employee, or subject person, as defined in Section 28700, who has access to or responsibility for the securities or funds of the capital access

company. The fidelity bond may be either a primary commercial blanket bond or a blanket position bond written by an insurer licensed by the California Insurance Commissioner. The bond shall be filed in the Sacramento Office of the Department of Corporations.

(b) The bond shall be renewed on at least an annual basis and the amount the bond shall be at least equal to an amount computed in accordance with the following schedule:

Amount of licensed Capital  
Access Company's Total Assets  
at End of Most Recent Fiscal  
Quarter Prior to Date of Determination  
In Dollars

Minimum amount of Bond

5,000,000 to 7,500,000	150,000
7,500,000 to 10,000,000	175,000
10,000,000 to 15,000,000	200,000
15,000,000 to 20,000,000	225,000
20,000,000 to 25,000,000	250,000
25,000,000 to 35,000,000	300,000
35,000,000 to 50,000,000	350,000
50,000,000 to 75,000,000	400,000
75,000,000 to 100,000,000	450,000
100,000,000 to 150,000,000	525,000
150,000,000 to 250,000,000	600,000
250,000,000 to 500,000,000	750,000
500,000,000 to 750,000,000	900,000
750,000,000 to 1,000,000,000	1,000,000
1,000,000,000 to 1,500,000,000	1,250,000
1,500,000,000 to 2,000,000,000	1,500,000
over 2,000,000,000	200,000 for each 500,000,000 of gross assets up to a maximum bond of 2,500,000.

(c) The sufficiency of the sureties on the bond is at all times subject to the approval of the Commissioner. The aggregate liability of the surety for all claims shall in no event exceed the penal sum of the bond.

(d) The bond shall contain a provision that the bond shall not be cancelled in whole or in part without 30 days written notice to the Commissioner by the bonding or insurance company.

(e) The bond shall also provide that the bonding or insurance company issuing the bond

provide written notice to the Commissioner within 10 days of service of any action against the bond and immediately upon payment of any claims.

(f) The Commissioner may at any time require an additional bond to be filed when in the Commissioner's opinion any bond then in force is insufficient for any reason.

Note: Authority cited: Section 28951, Corporations Code. Reference: Sections 28152(d) and 28703, Corporations Code.

## **Article 8. Unsafe and Unsound Acts**

280.450. For purposes of Sections 28551, 28604 and 28703 of the Corporations Code, unsafe and unsound acts include, but are not limited, to the following activities:

(a) Failing to maintain adequate working capital to provide reasonable assurance that the licensee will be able to operate actively and in accordance with its Articles and within the context of the business plan;

(b) Operating at variance with the basic organizational documents as filed pursuant to Commissioner's Rule 280.151.

(c) Amending the organizational documents in a manner that is inconsistent with Section 28200 of the Code.

(d) Any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee engages in any act or practice, or omits any act, in breach of his or her fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

(e) Engaging in any conduct which constitutes fraud of dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(f) Permitting any person other than the officers, directors, partners, members, trustees, or

employees listed in Item 4 of the application to have access to or responsibility for the funds of the capital access company.

- (g) Failing to maintain a tangible net worth of \$250,000.
- (h) Failing to maintain the required fidelity bond coverage.
- (i) Failing to obtain a majority vote of the board of directors, executive committee or other policy body approving the appointment or change in the accountant certifying the licensee's financial statements.
- (j) Commingling the general funds of the capital access company with the investment funds.

Note: Authority cited: Section 28951, Corporations Code. Reference: Sections 28551, 28604, and 28703, Corporations Code.

## **Article 9. Legend Requirement**

### **280.500. Legend Requirement.**

The certificates representing all securities of the capital access company sold to “accredited investors” for the purposes of providing capital to small business firms shall bear on their face a legend prominently stamped or printed thereon and in capital letters of not less than 10 point size, reading as follows:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE NOT REDEEMABLE  
AND MAY BE TRANSFERRABLE ONLY TO ACCREDITED INVESTORS AS DEFINED  
IN SECTION 28031 OF THE CORPORATIONS CODE.”

Note: Authority cited: Section 25951, Corporations Code. Reference: Sections 28200(b) and (d) and 28031, Corporations Code.



## **Article 10. Reports to the Commissioner**

### **280.600. Financial Statements**

(a) Whenever pursuant to these rules, or pursuant to an order or request of the Commissioner pursuant to the Capital Access Company Law, a financial statement or other report is required to be audited or be accompanied by the opinion of a certified public accountant or public accountant, such accountant shall be independent of the licensee, as determined in accordance with Section 602.02 of Financial Reporting Release Number 1 issued by the Securities and Exchange Commission.

(b) Except as provided in subsection (c), financial statements of a licensed capital access company required pursuant to these rules must be on a combining basis with an affiliate, if the licensed capital access company or such affiliate if the following conditions exist:

(1) The affiliate controls, is controlled by, or is under common control with, the licensed capital access company, either directly or indirectly, and

(2) The licensed capital access company or the affiliate is substantially dependent, either directly or indirectly, upon the other for services or revenue.

(c) Upon written request of a licensed capital access company, the Commissioner may waive the requirement that an affiliate be combined in a financial statement required pursuant to these rules. A waiver will only be granted when the affiliate is operating under an authority granted by a government agency pursuant to which the affiliate is required to submit periodic financial reports in a form prescribed by such governmental agency that cannot practicably be reformatted into the form prescribed by these rules.

(d) When combined financial statements are required by this section, the independent accountant's report or opinion must cover all the entities included in the combined financial statements. If the accountant's report or opinion makes reference to the fact that a part of the

examination was performed by another auditor, the plan shall also file the individual financial statements and report or opinion issued by the other auditor.

(e) Licensed capital access companies which have subsidiaries that are required to be consolidated under generally accepted accounting principles must present either

(1) consolidating financial statements, or

(2) consolidating schedules for the balance sheet and statement of operations, which in either case must show the capital access company separate from the other entities included in the consolidated balances.

(f) Annual financial statements filed with the Commissioner pursuant to Corporations Code Section 25501(a) shall include as an attachment to the financial statements fully disclosing all material transactions with affiliates.

Note: Authority cited: Sections 28500 and 29851, Corporations Code. Reference: Section 28501, Corporations Code.

#### 280.601. Change of Independent Accountant

Whenever the filing of financial statements required pursuant to Section 28501 are to be reported upon or certified by an accountant other than the accountant certifying the licensee's most recent filing, the licensee must furnish the Commissioner with a separate letter stating whether in the eighteen (18) months preceding the engagement of the new accountants there was any disagreement with the former accountants on any matter of accounting principles or practices, financial statement disclosure or auditing procedures, which such disagreement if not resolved to the satisfaction of the former accountants would have caused him to make reference to the subject matter of such disagreement in his opinion or report. This letter must be verified by a principal officer of the licensee. The licensee shall also request the former accountants to furnish them with a letter

addressed to the Commissioner stating whether he or she agrees with the statements contained in the letter of the licensee and, if not, stating the respects in which he or she does not agree. The notification by the licensee along with the former accountant's letter, if necessary, must be furnished to the Commissioner within 45 days of the engagement of the new accountants.

Note: Authority cited: Sections 28500 and 28951, Corporations Code. Reference: Section 28501, Corporations Code.

#### 280.602. Interim Reports

(a) Every capital access company shall file a report within 15 days from a determination that it has negative working capital or that its tangible net worth is reduced by 120% of its minimum tangible net worth as specified in Corporations Code Section 28152. See also Rule 280.450(g). The report shall include the capital access company's most recent financial statements prepared as of that month.

(b) The report required by subsection (a) shall be prepared as of a date within the 15-day period set forth in subsection (a). Additional reports shall be filed in the same form within 10 days of the close of each monthly accounting period until three consecutive months have elapsed in which the conditions specified in subsection (a) that required the filing of the report under subsection (a) no longer exist.

Note: Authority cited: Section 28951, Corporations Code. Reference cited: Section 28502, Corporations Code.

#### 280.603. Report of Civil, Criminal or Disciplinary Action.

(a) A capital access company shall immediately report in writing to the Commissioner any civil, criminal or disciplinary actions filed against the capital access company, or any of its officers,

directors, partners, members, employees, persons controlling 10 percent or more of the ownership interests, trustees, or investment advisers or affiliates.

(b) For purposes of this rule, “employee” means an individual with access to or responsibility for any funds held by the capital access company.

Note: Authority cited: Section 28951, Corporations Code. Reference: Section 28502, Corporations Code.

#### 280.604. Report of Defalcation.

(a) A licensee shall immediately report to the Commissioner any defalcation, embezzlement or theft made, or reasonably believed by the company to have been made, by any of its officers, directors, partners, members, employees or persons controlling 10 percent or more of the ownership interests, trustees, investment advisers, or affiliates.

(b) Employee shall have the same meaning as in Rule 280.603(b).

Note: Authority cited: Section 28951, Corporations Code. Reference: Section 28502 Corporations Code.

#### 280.605. Verification of Reports.

Attached to each financial report filed pursuant to these rules shall be a verification that, to the best knowledge and belief of the person making the verification,

- (1) the financial statements and supporting schedules are true and correct, and
- (2) no partner, officer, member, employee, trustee or director, thereof has any proprietary interest in any account classified as that of an investor. If the capital access company is a partnership, the verification shall be made by a general partner; if by a corporation, by a duly authorized officer; by a trust, a trustee; by a limited liability company, by a member.

Note: Authority cited: Sections 28502 and 28951, Corporations Code. Reference: Section 28502, Corporations Code.

## **Article 11. Books and Records**

### **280.650 Records to be Maintained by Capital Access Companies.**

(a) Every licensed capital access company shall maintain and keep true, current, and accurate the accounts, books, and other documents relating to its business which constitute the record forming the basis for financial statements required to be filed pursuant to Section 28501 of the Corporations Code.

(b) Every licensed capital access company shall maintain and keep current the following books, accounts, and other documents:

(1) Journals (or other records of original entry) containing an itemized daily record in detail of all purchases and sales of securities (including sales and redemption of its own securities), all receipts and deliveries of securities (including certificate numbers if such detail is not recorded by custodian or transfer agent), all receipts and disbursements of cash and all other debits and credits. Such records shall show for each such transaction the name and quantity of securities, the unit and aggregate purchase or sale price, commission paid, the market on which effected, the trade date, the settlement date, and the name of the person through or from whom purchased or received or to whom sold or delivered. and, in a subsidiary portfolio investment record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment.

(2) General and auxiliary ledgers (or other records) reflecting all assets, liability, reserve, capital, income and expense accounts, including:

- (i) Separate ledger accounts (or other records) reflecting the following:
  - (a) Securities in transfer (stated in terms of securities quantities only);
  - (b) Securities in physical possession; (stated in terms of securities quantities only)
  - (c) Securities borrowed and securities loaned (stated in dollar amounts and securities quantities as appropriate);
  - (d) Monies borrowed and monies loaned together with a record of the collateral therefor and substitutions in such collateral (stated in dollar amounts and securities quantities as appropriate);
  - (e) Dividends and interest received (stated in dollar amounts only);
  - (f) Dividend receivable and interest accrued (stated in dollar amounts only).
- (ii) Separate ledger accounts (or other records) for each portfolio security, showing (as of trade dates):
  - (a) the quantity and unit and aggregate price for each purchase, sale, receipt, and delivery of securities and commodities for such accounts, and
  - (b) all other debits and credits for such accounts. Securities positions and money balances in such ledger accounts (or other records) shall be brought forward periodically but not less frequently than at the end of fiscal quarters. Any portfolio security, the salability of which is conditioned, shall be so noted. A memorandum record shall be available setting forth, with respect to each portfolio security account, the amount and declaration ex-dividend, and payment dates of each dividend declared thereon.
- (iii) Separate ledger accounts (or other records) for each person with or through which transactions in portfolio securities are effected, showing each purchase or sale of securities with or through such persons, including details as to the date of the purchase or sale, the quantity and unit and aggregate price of such securities, and the commissions or other compensation paid to such persons. Purchases or sales effected during the same day at the same price may be aggregated.
- (iv) Separate ledger accounts (or other records), which may be maintained by a transfer agent

or registrar, showing for each shareholder of record of the capital access company the number of shares of capital stock of the company held. In respect of share accumulation accounts (arising from periodic investment plans, dividend reinvestment plans, deposit of issued shares by the owner thereof, etc.), details shall be available as to the dates and number of shares of each accumulation, and except with respect to already issued shares deposited by the owner thereof, prices of each such accumulation.

(3) Corporate charters, certificates of incorporation or trust agreements, and by-laws, and minute books of stockholders' and directors' or trustees' meetings; and minute books of directors' or trustees' committee and advisory board or advisory committee meetings.

(4) A record of each brokerage order given by or in behalf of the capital access company for, or in connection with, the purchase or sale of securities, whether executed or unexecuted. Such record shall include the name of the broker, the terms and conditions of the order and of any modification or cancellation thereof, the time of entry or cancellation, the price at which executed, and the time of receipt of report of execution. The record shall indicate the name of the person who placed the order in behalf of the capital access company.

(5) A record of all other portfolio purchases or sales showing details comparable to those prescribed in paragraph (4) of subsection (b) of this section.

(6) A record of the proof of money balances in all ledger accounts (except shareholder accounts), in the form of trial balances. Such trial balances shall be prepared currently at least once a month.

(7) A record for each fiscal quarter, which shall be completed within ten days after the end of such quarter, showing specifically the basis or bases upon which the allocation of orders for the purchase and sale of portfolio securities to named brokers or dealers and the division of brokerage commissions or other compensation on such purchase and sale orders among named persons were made during such quarter. The record shall indicate the consideration given to (i) sales of shares of the capital

access company by brokers or dealers, (ii) the supplying of services or benefits by brokers or dealers to the capital access company, its investment adviser or any persons affiliated therewith, and (iii) any other considerations other than the technical qualifications of the brokers and dealers as such. The record shall show the nature of the services or benefits made available, and shall describe in detail the application of any general or specific formula or other determinant used in arriving at such allocation of purchase and sale orders and such division of brokerage commissions or other compensation. The record shall also include the identities of the persons responsible for the determination of such allocation and such division of brokerage commissions or other compensation.

(8) A record in the form of an appropriate memorandum identifying the person or persons, committees, or groups authorizing the purchase or sale of portfolio securities. Where an authorization is made by a committee or group, a record shall be kept of the names of its members who participated in the authorization. There shall be retained as part of the record required by this paragraph any memorandum, recommendation, or instruction supporting or authorizing the purchase or sale of portfolio securities. The requirements of this paragraph are applicable to the extent they are not met by compliance with the requirements of paragraph (b)(4) of this section.

(9) Files of all advisory material received from the investment adviser, any advisory board or advisory committee, or any other persons from whom the capital access company accepts investment advice, other than material which is furnished solely through uniform publications distributed generally.

(10) Files of all investor suitability statements. Such files shall include the individual's name, telephone number, and the basis for establishing the suitability of the investor as an "accredited

(11) A record of all complaints received from investors. There shall be retained as part of the record required by this paragraph a description of the nature of the complaint and the final disposition and resolution of the complaint.



(12) Files containing due diligence documentation of the small business firms that the capital access company invests in, including but not limited to the following:

- (a) copies of each issuer's prospectus, if one was prepared;
- (b) copies of each issuer's offering circular, if one was prepared;
- (c) copies of each issuer's most recent annual report;
- (d) copies of each issuer's most recent balance sheet and profit and loss and retained earnings statements; and

(e) copies of written records of any other material information that comes to the knowledge or possession of the capital access company before the investment is made.

(13) The term "other records" as used in the expressions "journals (or other records of original entry)" and "ledger accounts (or other records)" shall be construed to include, where appropriate, copies of voucher checks, confirmations, or similar documents which reflect the information required by the applicable rule or rules in appropriate sequence and in permanent form, including similar records developed by the use of automatic data processing systems.

Note: Authority cited: Sections 28500 and 28951, Corporations Code. Reference: Section 28500, Corporations Code.

280.651. Records to be preserved by capital access companies.

- (a) Every licensed capital access company shall:
  - (1) Preserve permanently, for the first two years in a readily accessible place, all books and records required to be made pursuant to paragraphs (1) through (6) of subsection (a) of Rule 280.650;
  - (2) Preserve for a period of not less than five years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (7) through (12) of Rule 280.650 and all vouchers, memoranda,

correspondence, checkbooks, bank statements, cancelled checks, reconciliations, cancelled stock certificates, and other documents required to be maintained by 280.650(a) and not enumerated in Rule 280.650(b);

(3) Preserve for a period of not less than five years from the end of the fiscal year last used, the first two years in an readily accessible place, any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors.

(b)(1) The records required to be maintained and preserved under Rule 280.650 and this section may be produced or reproduced on photographic film after three years or, as provided in paragraph (2) of subsection (b), on magnetic tape, disk, or other computer storage medium, and be maintained and preserved for the required time in that form. If such records are produced or reproduced by photographic film or computer storage medium by or on behalf of, a capital access company, such capital access company shall:

(i) Arrange the records and index and file the films or computer storage medium in such a manner as to permit the immediate access and retrieval of any particular record;

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copies of the computer storage medium that the Commissioner, by his/her examiners or other representatives, or the directors of such capital access company may request;

(iii) Store separately from the original one other copy of the photographic film or computer storage medium for the time required;

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

(2) Under paragraph (b)(1) of this section, a capital access company may maintain and preserve on computer tape, disk, or other computer storage medium records that, in the ordinary course

of the capital access company's business, are created by, or on behalf of, the capital access company on electronic media or are received by, or on behalf of, the capital access company solely on electronic media or by electronic data transmission.

(3) Notwithstanding the provisions of paragraphs (a) and (b) of this section, any record, book or other document may be destroyed in accordance with a plan previously submitted to and approved by the Commissioner.

Note: Authority cited: Sections 28500 and 28951, Corporations Code. Reference: Section 28500, Corporations Code.

280.652. Records Prepared or Maintained by Other Than Person Required to Maintain and Preserve Them.

(a) If the records required to be maintained and preserved pursuant to the provisions of Rules 280.650 and 280.651 are prepared or maintained by others on behalf of the capital access company required to maintain and preserve such records, the person required to maintain and preserve such records shall obtain from such other person an agreement in writing to the effect that such records are the property of the person required to maintain and preserve such records and will be surrendered promptly to the Commissioner on request.

(b) In cases where a bank or member of a national securities exchange acts as custodian, transfer agent, or dividend disbursing agent, compliance with this section shall be considered to have been met if such bank or exchange member agrees in writing to make any records relating to such service available upon request and to preserve for the periods prescribed in Rule 280.651 any such records as are required to be maintained by 280.650.

Note: Authority cited: Section 28500, Corporations Code. Reference: Sections 28501(a) and 28501(c), Corporations Code.

280.653. Books and Records: Location and Office Hours.

A capital access company shall keep the Commissioner promptly advised at all times of the address or addresses at which the books and records are maintained and, if the office or location hours at the place where the books and records are maintained are other than 8 a.m. to 5 p.m., Monday through Friday, the hours and days during which the books and records may be reviewed.

Note: Authority cited: Section 28500, Corporations Code. Reference: Sections 28500 and 28503, Corporations Code.

## **Article 12. Custody**

280.700. Custody of securities or other similar investment - Contract

(a) No capital access company shall place or maintain any of its securities or similar investments in custody with any person outside the State of California.

(b) No capital access company shall place or maintain any of its securities or similar investments in the custody of any person, except pursuant to a written contract which shall have been approved, by a majority of the board of directors of such capital access company.

(c) The contract shall require that the securities and investments be maintained in accordance with the following:

(1) The securities and similar investments held in such custody shall at all times be individually segregated from the securities and investments of any other person and marked in such manner as to clearly identify them as the property of such capital access company both upon physical inspection thereof and upon examination of the books of the custodian;

(2) The custodian shall have no power or authority to assign, hypothecate, pledge or

otherwise to dispose of any such securities and investments, except pursuant to the direction of capital access company and only for the account of such capital access company;

(3) Such securities and investments shall be subject to no lien or charge of any kind in favor of the custodian or any persons claiming through the custodian.

(4) Such securities and investments shall be verified by actual examination at the end of each annual fiscal period by an independent public accountant retained by the capital access company, and shall be examined by an accountant at least one time during each year on an unannounced basis. This unannounced examination must be conducted independent to the annual certified audit. A certificate of such accountant, stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be filed with the Commissioner within 45 days after each examination. If the accountant notes any material deficiencies during the examination, such deficiencies must immediately be reported to the Commissioner.

(5) Such securities and investments shall, at all times, be subject to inspection by the Commissioner through the Commissioner's employees or agents.

(d) A copy of any contract executed or ratified pursuant to subsection (b) of this section shall be transmitted to the Commissioner promptly after execution or ratification unless it has been previously transmitted.

(e) Any contract executed or ratified pursuant to subsection (b) of this section shall be ratified by the board of directors of the capital access company at least annually thereafter.

Note: Authority cited: Sections 28500 and 28951, Corporations Code. Reference: Section 28500, Corporations Code.

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